



Office of the Attorney General
State of Texas

July 14, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Bob Looney
Fire Chief
City of Mansfield
210 Smith Street
Mansfield, Texas 76063

OR93-458

Dear Mr. Looney:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19576.

The Mansfield Fire Department (the "department") has received a request for "access to memos dated from 1/1/92 to the present." Section 7(a) of the Open Records Act requires a governmental body to release requested information or to request a ruling from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. You received the request for information under the Open Records Act on March 4, 1993. You advise us that thereafter some of the requested information was made available to the requestor. By letter dated May 19, 1993, you submitted to us for review the remainder of the requested information. Although that letter asserts no exceptions to required public disclosure for this information, we treat it as a request for an open records ruling pursuant to section 7(a) of the Open Records Act.

The department received the request for information on March 4, 1993, but did not request a ruling from this office until May 19, 1993, almost two and a half months later. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. See *id.* Normally, the presumption of openness can be overcome only by a compelling demonstration that the information should not be released to the public, *i.e.*, that the information is deemed confidential by some other source of law or that third-party interests are at stake. Open Records Decision No. 150 (1977).

We have examined the information submitted to us for review. Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision Nos. 455 (1987); 325 (1982), we will raise section 3(a)(1) because the release of confidential information could impair the rights of third parties and because improper release constitutes a misdemeanor. *See* V.T.C.S. art. 6252-17a, § 10(a). Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 3(a)(1) excepts information from required public disclosure if its release would cause an invasion of privacy under the test articulated by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. *Id.* at 682. Some of the information submitted to us for review is highly intimate or embarrassing and is of no legitimate concern to the public. *See, e.g.*, Open Records Decision Nos. 539 (1990); 470, 455 (1987); 343 (1982). This information has been marked and must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. You have not made a compelling demonstration that the remainder of the submitted information should be withheld from required public disclosure. Accordingly, we conclude that the remaining information must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/GCK/jmn

Ref.: ID# 19576
ID# 20463
ID# 20839

Enclosures: Marked document

cc: Mr. John F. McClure III
1003 Country Club Road
Cleburne, Texas 76031
(w/o enclosures)